Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

PETITION FOR A WRIT OF CERTIORARI

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December 8, 1994

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QUESTIONS PRESENTED

1. Whether a United States bankruptcy court can abstain under 28 U.S.C. § 1334(c)(1) from determining an objection to a proof of claim notwithstanding the mandate of 11 U.S.C. § 502(b) that the court "shall determine" such an objection after notice and a hearing?
2. Does the filing of a proof of claim in a bankruptcy proceeding constitute a waiver by a creditor of its right to request a bankruptcy court to abstain from adjudicating an objection to its proof of claim under 28 U.S.C. § 1334(c)(1)?
3. Does the Due Process Clause of the Fifth Amendment require that a debtor be afforded an opportunity to be heard before his bankruptcy petition is found to have been filed in bad faith?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were petitioner Ulpiano Unanue-Casal, a/k/a Charles Unanue ("Petitioner"), Gerardo A. Quiros-Lopez, trustee of Petitioner's estate in bankruptcy ("Trustee Quiros-Lopez") and respondents Goya Foods, Inc., Goya de Puerto Rico, Inc. (Goya Foods, Inc. and Goya de Puerto Rico, Inc. are collectively referred to as the "Goyas"), Zolmar Realty Corp., Interamericas Advertising, Island Can Corporation, Tradewind Foods, Inc., Inter-Americas Advertising Corp., CPR Limited, Condimentos de Puerto Rico, Inc., Industrial Enterprises, Inc., Joseph A. Unanue and Frank Unanue (all respondents are collectively referred to as "Respondents").

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the First Circuit entered on August 5, 1994.

OPINIONS BELOW

The opinion and judgment of the Court of Appeals for the First Circuit entered on August 5, 1994 has not been reported and is reprinted in the appendix hereto, p. 1a, *infra*. The order of the Court of Appeals denying Petitioner's petition for rehearing entered on September 8, 1994 has not been reported and is reprinted in the appendix hereto, p. 19a, *infra*.

The opinion and judgment of the district court filed on December 14, 1993 is reported at 164 B.R. 216 (D.P.R. 1993) and is reprinted in the appendix hereto, p. 3a, *infra*.

The opinion and order of the bankruptcy court entered on November 20, 1992 has not been reported and is reprinted in the appendix hereto, p. 20a, *infra*.

JURISDICTION

On August 29, 1990, Petitioner filed his petition for bankruptcy with the Clerk of the United States Bankruptcy Court for the District of Puerto Rico invoking federal jurisdiction under 28 U.S.C. § 1334(a).

On November 20, 1992, the bankruptcy court denied Respondents' motion for it to abstain from determining the objection of Petitioner and Trustee Quiros-Lopez to the proofs of claim voluntarily filed by the Goyas.

Respondents appealed the bankruptcy court's opinion and order to the district court under 28 U.S.C. § 158(a). On December 13, 1993, the district court reversed the bankruptcy court.

Petitioner appealed the district court's opinion and judgment to the First Circuit under 28 U.S.C. § 158(d) and 28 U.S.C. § 1291. The First Circuit affirmed the district court on August 5, 1994 and denied Petitioner's petition for rehearing on September 8, 1994.

The jurisdiction of this Court to review the opinion and judgment of the First Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

11 U.S.C. § 502. Allowance of claims or interests

> (a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.
>
> (b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hear-

ing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition . . . .

28 U.S.C. § 1334. Bankruptcy cases and proceedings

* * * *

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

U. S. Const. amend. V

No person shall be . . . deprived of life, liberty, or property, without due process of law . . . .

STATEMENT OF THE CASE

For over 25 years, Petitioner has been engaged in an epic, bitter and all encompassing dispute with his father and brothers arising out his exposure of a massive tax fraud scheme perpetrated by his brothers involving unreported corporate profits of approximately $3,000,000. The dispute has been litigated in various forums throughout the United States and, since 1987, has focused exclusively on Petitioner's claim to inherit his share of his parents' estates. These estates are currently valued by Petitioner to be in excess of $300,000,000.

Prior to 1969, Petitioner, his father and his brothers were the shareholders, officers and directors of Goya Foods, Inc. and Petitioner and his brothers were the shareholders, officers and directors of Goya de Puerto Rico, Inc.'s predecessor corporations, Puerto Rico Food Products Corporation and Caribbean Canneries, Inc. However, in June 1969, after Petitioner's public disclosure of his brothers' tax fraud scheme, his father and brothers voted to discharge him as an officer, director and employee of the corporations. Thereafter, extensive litigation ensued.

Goya Foods, Inc. subsequently paid additional federal income taxes, interest and fraud penalties totalling in excess of $200,000. The litigation was settled by an agreement dated June 9, 1972 ("1972 Agreement") between Petitioner, Goya Foods, Inc., Puerto Rico Food Products Corporation, Caribbean Canneries, Inc. and other family owned corporations and a partnership ("Buyers"). The 1972 Agreement was executed and performed in Puerto Rico. Pursuant to its terms, Petitioner sold his interests in the Buyers back to them for $4,500,000 over time, subject to adjustment and acceleration based on a public offering of Petitioner's interests in the Buyers that was to take place within the following two years.

In 1973, Petitioner alleged that the Buyers and his brothers breached the 1972 Agreement by canceling the 1,250 non-voting shares of Goya Foods, Inc. owned by Caribbean Canneries, Inc. which effectively reduced his potential public offering adjustment. As a result, Petitioner served a notice of default and Goya Foods, Inc. filed suit in New York for a judgment declaring that no default had taken place.

The declaratory judgment action was settled by the execution of an amendment to the 1972 Agreement dated July 31, 1974 ("1974 Amendment") between Petitioner and the Buyers. It was executed and performed in Puerto Rico.

Pursuant to the 1974 Amendment, Petitioner agreed to: (1) the cancellation of the 1,250 non-voting shares of Goya Foods, Inc.; (2) the cancellation of the public offering; (3) a waiver of his future inherritance from his father; (4) restrictions on any interest in the Buyers he might obtain or inherit in the future from others; (5) a $200,000 reduction in the sales price; and (6) a penalty clause of twice the attorneys fees and costs to be paid by any signatory of the 1974 Amendment that loses an action against any other signatory ("Penalty Clause").

Petitioner's father died in 1976. During the last five years and four months of his life, Petitioner's father resided in and did not leave Puerto Rico. Petitioner estimates that the value of his father's estate prior to his death, which included an undivided one-half interest in voting control of Goya Foods, Inc., was approximately $35,000,000. The executors of his father's estate were respondents Joseph A. Unanue and Frank Unanue, Petitioner's then surviving brothers. They reported their father's estate for federal and state tax purposes to be valued at approximately $1,493,000.

Petitioner's mother died in 1984, at which time Petitioner fully expected to inherit one fourth of her estate, which included an undivided one-half interest in voting control of Goya Foods, Inc., pursuant to the terms of her will. Petitioner estimates that the value of his mother's estate at her death was approximately $100,000,000. Her executors, respondents Joseph A. Unanue and Frank Unanue, reported her estate for federal and state tax purposes to be approximately $30,000.

In 1987, Petitioner discovered this his waiver of his right to inherit from his father's estate was void under the laws of Puerto Rico, the jurisdiction in which Petitioner was domiciled, in which the 1974 Amendment was executed and performed and in which, according to Petitioner's contention, his father was also domiciled. Therefore, Petitioner served a demand upon his brothers for his fair and just share of both estates.

In response to Petitioner's demand, the executors commenced an action in New Jersey seeking a declaratory judgment that Petitioner was not entitled to inherit from his father. Shortly thereafter, Petitioner commenced an action in Puerto Rico seeking his inheritances from his parents and aunt, all of whom Debtor contended died domiciled in Puerto Rico.

In 1988, Petitioner filed a complaint in Puerto Rico contesting the validity of the 1972 Agreement as

amended by the 1974 Amendment. Thereafter, Goya Foods, Inc. continued the jurisdictional war by filing a complaint against Petitioner as an intervenor in the New Jersey action seeking a declaratory judgment that the agreements were valid. The two Puerto Rico actions were subsequently consolidated and stayed pending completion of a plenary hearing in the New Jersey action to determine the domicile of Petitioner's father on the date that he executed his will and trust and on the date of his death. All other aspects of the New Jersey action were also stayed pending the plenary hearing. The testimonial phase of the hearing required 171 trial days.

On August 29, 1990, Petitioner filed a voluntary petition for bankruptcy in the United States District Court for the District of Puerto Rico. Thereafter, the bankruptcy court became the central arena for the continued struggle among the Unanue brothers.

On October 29, 1990, each of the Goyas voluntarily filed proofs of claim in Petitioner's bankruptcy proceeding. The original proof of claim filed by Goya Foods, Inc. seeks an "estimated" $4,000,000 for attorneys fees based upon the Penalty Clause. (App. at 33).[1] The original proof of claim filed by Goya de Puerto Rico, Inc. seeks an "estimated" $2,000,000 for attorneys fees based upon the Penalty Clause as well. (App. at 41). Their amended proofs of claim increase their "estimated" claims to $15,000,000 and $5,000,000, respectively. (App. at 317 and 318).

Petitioner and Trustee Quiros-Lopez objected to all of the Goyas' proofs of claim because:

1. The claims were fraudulent and overstated.
2. The Goyas refused to provide evidence to substantiate the amounts that they allegedly paid as attorneys fees.

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[1] All "App." references are to the appendix filed by Petitioner in the First Circuit.

3. The claims included payments by the Goyas to attorneys who represented clients who were not signatories to the 1974 Amendment.

4. The claims included pre and post petition attorneys fees.

5. The claims included estimated, anticipated future attorneys fees.

6. The claims were contingent and unmatured and should be liquidated by the bankruptcy court in order to afford Petitioner complete relief.

7. The Penalty Clause upon which the claims were based is void as against the public policy of Puerto Rico and, if applicable, New York.

On February 6, 1991, the bankruptcy court modified the automatic stay to permit the New Jersey court to conclude the plenary hearing to determine the domicile of Petitioner's father, but denied the motion by the Goyas and others to lift the stay on the remaining aspects of the New Jersey action which had not yet commenced.

On September 24, 1991, the bankruptcy court consolidated the objection to the Goyas' proofs of claim of Petitioner and Trustee Quiros-Lopez with a fraudulent transfer adversary proceeding and directed that Petitioner file the objection as a permissive counterclaim in that action. The counterclaim also reasserted Petitioner's claims to his inheritances and the invalidity of the 1974 Amendment.

On December 4, 1991, the New Jersey court issued an opinion concluding that Petitioner's father was domiciled in New Jersey notwithstanding 48 U.S.C. § 733a, which provides that "[a]ll citizens of the United States who have resided [in Puerto Rico] for one year shall be citizens of Puerto Rico." The Goyas and others responded to this decision by again asking the bankruptcy court to lift the automatic stay to permit the New Jersey action to proceed. On May 15, 1992, the motion was denied and, thereafter, the movants appealed to the district court.

On November 20, 1992, in an effort to move the bankruptcy proceeding to a swift conclusion, the bankruptcy court severed for trial the limited core issue of the objection to the Goyas' proofs of claim for the following reasons:

> 1. We may avoid resolving intricate issues of jurisdiction and determinations of whether all causes of actions raised in the complaint and the amended counterclaim are core or "non-core".[3]
>
> 2. Whether we rule in favor or against the objections, the ruling would afford both the bankruptcy court and the Trustee a swift and economical way of liquidating this Chapter 7 case. Hence, judicial resources are conserved by this severance in suits which thus far have engendered litigation on constitutional questions posed by *Connecticut v. Doehr*, and a myriad of preliminary requests including such arcane matters as issuance of letters rogatory to allow attachments, etc., of assets purportedly located in Great Britain and Switzerland. [Footnote omitted]. These are but a presage of what is to come.
>
> In sum, irrespective of the outcome, resolving the objection to the Goyas' claims ahead of other issues raised in the consolidated amended adversary complaints and the amended counterclaim, provides the best solution to this bankruptcy case. [pp. 23a-24a, *infra*].

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[3] The consolidated adversary complaints filed in this case seek not only to avoid alleged fraudulent transfers, but also seek a denial of discharge.

The bankruptcy court then considered and denied Respondents' motion for it to abstain under 28 U.S.C. § 1334(c)(1) and (2). It summarized its rulings as follows:

> 1. We sever the amended counterclaim's "First Claim for Relief", and within that First Claim for Relief, we sever the issue of whether the Goyas'

proofs of claims filed in this case should be denied together with those portions of the preliminary motions addressing the Bankruptcy Court's lack of jurisdiction and need to abstain in this proceeding.

2. We stay all other causes of actions together pending discovery in the captioned adversary proceeding.

3. The Goyas' Motion to Dismiss the severed issue for lack of subject matter jurisdiction is denied, as well as their request calling on us to exercise discretionary abstention to allow the New Jersey Court to decide the severed issue.

4. The pretrial hearing scheduled for December 1, 1992 before the undersigned remains in full force and effect *with respect to the severed issue only.* [p. 32a, *infra*].

In its opinion and order entered on December 2, 1992 denying Respondents' motion for a stay pending their appeal to the district court, the bankruptcy court reaffirmed that the only issue that had been severed for trial was the objection by Petitioner and Trustee Quiros-Lopez to the Goyas' proofs of claim. It stated:

> [W]e have *not* severed the issue of whether the entire 1974 Amendment or all of the claims for relief asserted by Debtor in the Amended Counterclaim are valid under state law . . . . [App. at 1020 (emphasis added)].

Thereafter, discovery was exchanged, although the Goyas refused to provide original unredacted documents to support their proofs of claim. The original June 23, 1993 trial date was adjourned by the bankruptcy court to September 20, 1993.

On August 3, 1993, the district court reversed the bankruptcy court's denial of the motion to lift the automatic stay. In doing so, it evidenced a striking bias against Petitioner when it *sua sponte* made vital factual

findings without evidentiary support and without affording Petitioner the opportunity to present evidence. *See In re Unanue-Casal,* 159 B.R. 90, 99-102 (D.P.R. 1993). Specifically, the district court concluded based upon the unsworn statements of the movants' attorneys in their briefs and at oral argument that it was "common knowledge" that the [Petitioner] is not bankrupt," *id.* at 99, and that he "acted in bad faith when he filed for bankruptcy", *id.* at 102, even though the bankruptcy court had found based upon the factual record before it that there was no evidence of misconduct on the part of Petitioner, *id.* at 99 n.20. The district court's reversal was appealed by Petitioner to the First Circuit and affirmed on May 12, 1994.

After it received notice of the district court's action, the bankruptcy court adjourned the September 20, 1993 hearing without a new date.

In its opinion and judgment filed on December 15, 1993, the district court reversed the bankruptcy court's abstention decision and abstained from determining the objection to the proofs of claim under both 28 U.S.C. § 1334(c)(1) and (2). Its jurisdictional analysis was apparently result oriented and again driven by its unyielding perception that Petitioner's bankruptcy was a "manipulation of the judicial system" and a "sham". *See* p. 16, *infra.* In fact, its opinion commences with its assertion that it is reversing the bankruptcy court *"because* we remain convinced that [Petitioner's] bankruptcy action is a ruse designed to frustrate the legitimate rights of his adversaries." P. 4a, *infra* (emphasis added).

On August 5, 1994, the First Circuit affirmed the district court's abstention under 28 U.S.C. § 1334(c)(1), thereby recognizing that the determination of an objection to a proof of claim is a core proceeding. On September 9, 1994, the First Circuit denied Petitioner's petition for rehearing.

Although Trustee Quiros-Lopez has refused to represent Petitioner's estate in the New Jersey action, it is proceeding. However, notwithstanding the district court's abstention in favor of the New Jersey court to determine the objection of Petitioner and Trustee Quiros-Lopez to the Goyas' proofs of claim, that court has not, and will not, undertake the determination of this issue.

REASONS FOR GRANTING THE WRIT

11 U.S.C. § 502(b) is a congressional mandate to the bankruptcy court to conclusively determine an objection to a proof of claim voluntarily filed in a bankruptcy proceeding. This section is consistent with previous rulings of this Court explaining that a creditor, by filing a proof of claim, has consented to the broad equitable jurisdiction of the bankruptcy court to fully and completely determine proofs of claim. *See Langenkamp v. Culp,* 498 U.S. 42, 44 (1990); *Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33, 58-59 (1989); *Katchen v. Landy,* 382 U.S. 323, 329 (1966). Given these precedents, and the obligatory congressional directive of 11 U.S.C. § 502(b), it is apparent that a bankruptcy court cannot abstain from fulfilling its obligation to determine an objection to a voluntarily filed proof of claim.

The First Circuit's affirmance of the district court's abstention carves out, without congressional authorization, an entirely new exception to bankruptcy jurisdiction based upon its erroneous conclusion that a determination of an objection to a proof of claim can somehow be adjudicated in a state court proceeding. The court's decision results in the anomaly of a bankruptcy court being prohibited from adjudicating a federal issue (in direct contravention of its statutory duty under 11 U.S.C. § 502(b)) by abstaining under a statutory provision primarily concerned with comity and respect for state law (28 U.S.C. § 1334 (c)(1)). This case presents an important issue of the interpretation and interaction of two federal statutes in

the context of an erroneous ruling by the First Circuit that serves to distort the already clouded parameters of the bankruptcy court's legitimate area of jurisdiction. In this context, the need for this Court to provide authoritative guidance is apparent.

I. THIS COURT SHOULD GRANT THE WRIT TO UPHOLD CONGRESS' CLEAR INTENT THAT THE BANKRUPTCY COURT "SHALL DETERMINE" OBJECTIONS TO PROOFS OF CLAIM.

The Bankruptcy Amendments and Federal Judgeships Act of 1984 ("Act") was designed to cure the constitutional infirmities of the Bankruptcy Code of 1978 by dividing the bankruptcy court's jurisdiction into "core" proceedings, over which the bankruptcy court exercises full judicial power, and "non-core" proceedings, over which the bankruptcy court's power is severely limited. The Act was not designed to limit or deny the bankruptcy court's jurisdiction in the area central to its traditional and essential function within the federal system; namely, granting debtors a "fresh start" through the claims allowance process.

11 U.S.C. § 502(b) embodies Congress' recognition of the importance of claims allowance in a bankruptcy proceeding. It provides that, once an objection to a proof of claim is filed, the bankruptcy court "shall determine the amount of such claim . . . ." Congress' use of the word "shall" is not ambiguous. "Shall" is used in a law or regulation to "express what is mandatory". Websters Ninth Collegiate Dictionary 1081 (1989). Thus, Congress has conclusively directed that bankruptcy courts *must* determine objections to proofs of claim.

This statutory interpretation is consistent with previous rulings of this Court emphasizing the central role of claims allowance in the bankruptcy process. Thus, in *United States Fidelity and Guarantee Co. v. Bray*, 225 U.S. 205 (1912), this Court held that "[t]he jurisdiction

of the bankruptcy courts in all 'proceedings in bankruptcy' is intended to be exclusive of all other courts, and . . . such proceedings include, among others, all matters of administration, such as allowance, rejection and consideration of claims . . . ." *Id.* at 217. More specifically, "[w]hen objections are made, [the bankruptcy court] is *duty bound* to pass on them." *Gardner,* 329 U.S. 572, 573 (1947) (emphasis added). *See Katchen,* 382 U.S. at 329.

At least two Courts of Appeals have similarly recognized the vital importance of claims allowance and, in particular, determinations of objections to proofs of claim, to the successful administration of a bankruptcy proceeding. The Second Circuit has held that "the determination of an objection to a proof of claim . . . is clearly at the core of the federal bankruptcy function of restructuring debtor-creditor rights, implicating the unique powers of bankruptcy courts." *In re Manville Forest Products Corp.,* 896 F.2d 1384, 1390 (2. Cir. 1990). The Fifth Circuit has similarly explained that the determination of an objection to a proof of claim is an administrative proceeding that, by its very nature, can *only* arise in the context of a bankruptcy case. *See In re Wood,* 825 F.2d 90, 96-97 (5th Cir. 1987). It cannot exist outside of bankruptcy.

District courts have also recognized the mandatory obligation to determine objections to proofs of claim. Bankruptcy courts "*must* determine the legal sufficiency of a claim alleged to be defective and, under 11 U.S.C. § 502, *must* either disallow the claim or determine the amount to be allowed under the claim." *In re Circle J. Dairy, Inc.,* 112 B.R. 297, 300 (W.D. Ark. 1989) (emphasis added).

The mandatory nature of the word "shall" in 11 U.S.C. § 502(b) is also supported by case law interpreting 11 U.S.C. § 502(c)(1), which provides that the bankruptcy court "shall" estimate contingent or unliquidated claims to avoid undue delay in the administration of the case.

"Section 502(c) is a mandate to the [bankruptcy] court to estimate a claim when liquidation is impractical or would unduly delay the proceedings." *In re Nova Real Estate Investment Trust,* 23 B.R. 62, 65 (E.D. Va. 1982). Under such circumstances, the court is duty bound to estimate these claims. *In re Towner Petroleum Co.,* 48 B.R. 182, 187 (W.D. Okl. 1985); *Nova,* 23 B.R. at 65.

The same interpretation should hold true in the context of 11 U.S.C. § 502(b). It is a mandatory direction to the bankruptcy court which must be fulfilled.

The decision of the First Circuit not only conflicts with the decisions of this Court referenced above, but also with decisions from the Second and Fifth Circuits recognizing the jurisdictional significance of the filing of a proof of claim and the bankruptcy court's affirmative duty to determine objections to such claims. The effective administration of the Bankruptcy Code depends upon the bankruptcy court's ability to fashion far reaching and complete relief to debtors. The First Circuit's decision strips the bankruptcy court of this power and stands as erroneous precedent likely to cause further confusion in the lower federal courts. The need for this Court to conclusively establish the jurisdictional parameters of 11 U.S.C. § 502(b) is essential.

II. THIS COURT SHOULD GRANT THE WRIT TO DETERMINE THE CONCLUSIVE JURISDICTIONAL EFFECT OF A CREDITOR'S VOLUNTARY FILING OF A PROOF OF CLAIM.

The equitable power of the bankruptcy court to conclusively determine an objection to a proof of claim is initiated by the creditor's voluntary submission to the bankruptcy court's jurisdiction by filing a proof of claim. *Langenkamp,* 498 U.S. at 44 (citing *Granfinanciera,* 492 U.S. at 57-58). A putative creditor is not required to file such a claim. However, after having done so, the

creditor fully submits to the court's jurisdiction and "must abide the consequences of that procedure." *Gardner*, 329 U.S. at 573 (citing *Wiswall v. Campbell*, 93 U.S. 347 (1876). Stated differently, after having filed a proof of claim seeking a part of the bankruptcy estate, the creditor can no more seek to remove its claim from the bankruptcy court's jurisdiction than the court can ignore its statutory duty to determine the objection to the proof of claim under 11 U.S.C. § 502(b). The decision of the First Circuit countenances both.

The jurisdictional significance of the voluntary filing by a creditor of a proof of claim has been repeatedly recognized by this Court. *See Granfinanciera*, 492 U.S. at 58-60. Thus, a creditor's right to a jury trial on a trustee's preference claim depends "upon whether the creditor has submitted a claim against the estate . . . ." *Granfinanciera*, 492 U.S. at 58. Here, a similar distinction must be drawn with reference to a creditor's right to request discretionary abstention under 28 U.S.C. § 1334(c)(1). A creditor who has affirmatively placed his claim, whether liquidated or unliquidated, within the bankruptcy court's expansive equitable power is in an entirely different position than a defendant in an adversary proceeding initiated by a bankruptcy trustee, as was the case in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). The former subjects himself to the essential and mandatory claims allowance process of the bankruptcy court, while the latter retains the right to object to the determination of the disputed issue in the bankruptcy proceeding.

The First Circuit decision ignores this important distinction, just as it does the decisions of this Court holding that by filing a proof of claim, a creditor submits to the jurisdiction of the bankruptcy court and its broad equitable power to allow or disallow claims asserted against the bankruptcy estate. The First Circuit decision thus creates confusing precedent at odds with prior decisions of this Court and the clear intent of Congress.

III. THIS COURT SHOULD GRANT THE WRIT BECAUSE THE FIRST CIRCUIT'S DECISION RAISES IMPORTANT AND UNRESOLVED ISSUES CONCERNING THE SCOPE OF DISCRETIONARY ABSTENTION UNDER 28 U.S.C. § 1334(c)(1).

Since *Marathon* and the passage of the Act, lower federal courts have unsuccessfully attempted to define a clear, understandable delineation of the scope of the bankruptcy court's jurisdiction. The First Circuit's erroneous application of the discretionary abstention doctrine is a reflection of this confusion and another reason why clear guidance from this Court is warranted.

28 U.S.C. § 1334(c)(1) provides that "[n]othing in this section prevents a district court . . . from abstaining from hearing a particular" core proceeding. Thus, the bankruptcy court is invested with discretion to abstain from hearing a core proceeding in the interest of justice *unless* it is otherwise prevented from doing so by another section of the Bankruptcy Code.

As previously noted herein, bankruptcy courts are duty bound by 11 U.S.C. § 502(b) to determine objections to proofs of claim. Therefore, this section constitutes an absolute bar to the exercise of discretion under 28 U.S.C. § 1334(c)(1) to abstain from determining objections.

Indeed, this is the logical interpretation of the interaction of the two statutes given the fact that objections to proofs of claim only exist in bankruptcy proceedings. There is, therefore, no other forum that the bankruptcy court can abstain in favor of. *See Wood*, 825 F.2d at 97.

The First Circuit's decision fails to recognize the preclusive effect of 11 U.S.C. § 502(b)'s mandate on the court's discretionary power to abstain under 28 U.S.C. § 1334(c)(1). In so doing, the First Circuit has condemned the objection to the Goyas' proofs of claim into legal limbo, where it can never be resolved. Given the importance of the interaction of these two federal statutes,

the need for conclusive guidance from this Court is essential.

IV. THIS COURT SHOULD GRANT THE WRIT BECAUSE THE DUE PROCESS CLAUSE REQUIRES THAT A HEARING BE HELD BEFORE A DEBTOR IS FOUND TO HAVE FILED A BANKRUPTCY PETITION IN BAD FAITH.

On two separate occasions, the First Circuit has affirmed decisions driven by the district court's unfounded factual perceptions and *sua sponte* conclusions regarding the integrity of Petitioner's bankruptcy filing. In the first instance, the district court posited, when adjudicating the motion to lift the automatic stay, that it was "common knowledge that the [Petitioner] is not bankrupt", *Unanue-Casal,* 159 B.R. at 99, and that he "acted in bad faith when he filed for bankruptcy", *id.* at 102. The evidentiary source of this common knowledge was not revealed nor contained within the bankruptcy court record which was before the district court. On the second occasion, the First Circuit affirmed the district court's abstention decision, which was based upon the equally irrelevant and factually unsupported conclusion that Petitioner's bankruptcy is "a ruse designed to frustrate the legitimate rights of his adversaries." P. 4a, *infra.*

While Petitioner recognizes that the jurisdiction of this Court is rarely invoked solely to remedy an injustice perpetrated on a single litigant, the First Circuit's action in this case implicates broader principles of constitutional law in that it countenances a decision making process at odds with the Fifth Amendment's guarantee of due process. It stands for the untenable and constitutionally repellent proposition that a district judge can adjudicate a litigant a sham bankrupt without affording that litigant a hearing or any opportunity to be heard. Given the magnitude of the estate involved in this case, and the importance of affirming the vitality of the Due Process Clause within the bankruptcy arena, the jurisdiction of this Court to right this particular wrong should be invoked.

The Bankruptcy Code provides that a debtor "shall" be granted a discharge unless he engages in certain specifically delineated wrongful conduct, such as false swearing or presenting a false claim. 11 U.S.C. § 727(a)(4)(A) and (B). While this Court has held that a debtor has no constitutional or fundamental right to a discharge in bankruptcy, *United States v. Kras*, 409 U.S. 434, 445-46 (1991), he does have a right and legitimate expectation that the procedures utilized within a bankruptcy proceeding conform to accepted notions of fair play and due process. The Bankruptcy Rules embody this principle by outlining procedures which must be followed before a debtor's petition can be dismissed for wrongful conduct, *see* Fed. R. Bankr. P. 1017(e), as do prior decisions of this Court addressing the standard of proof that a defrauded creditor must satisfy in order to avoid dischargeability, *see Grogan v. Garner*, 498 U.S. 279 (1991). Petitioner is thus entitled, at a bare minimum, to an opportunity to be heard, *see Goldberg v. Kelly*, 397 U.S. 254 (1970), and the opportunity to present his case to a fair, neutral and detached judge, *see Ward v. Village of Monroeville*, 409 U.S. 57, 61-62 (1972). This is the basic principle of fairness inherent in the Due Process Clause.

Here, Petitioner faces the very real prospect of his bankruptcy petition being dismissed by virtue of the collateral estoppel effect of the district court's pronouncements regarding the veracity of his actions. *See Grogan*, 498 U.S. at 763 n.11. Although these conclusions represented nothing more than the district court's divination of "common knowledge", they have nonetheless infected the record and are repeatedly utilized by Respondents to cast doubt on Petitioner's credibility in each proceeding and forum. Thus, Petitioner has been placed in the position where concrete factual determinations manufactured by the Court at the suggestion of Respondents work to repeatedly prejudice the outcome of each and every legal issue and proceeding in which Petitioner is a party. The district court's conclusive pronouncements have been re-

peated so often that they have taken on the patina of authenticity and, like a virulent rumor, are accepted as fact.

Given the multiplication of error caused by the district court's unyielding negative perception of the accuracy of Petitioner's bankruptcy petition, the intervention of this Court is appropriate and required to affirm that a bankruptcy proceeding does not comport with due process when the unsubstantiated becomes fact, when bias infects the record and when Petitioner is denied the opportunity to rebut a factual finding of misconduct. Here, the district court has concluded, and the First Circuit has affirmed, a determination of a bad faith bankruptcy filing without Petitioner being afforded any opportunity to present factual testimony to the court regarding this issue. This case is thus analogous to criminal prosecutions reviewed by this Court when the evidence against the accused was so lacking that the entire proceeding raised important constitutional questions of due process. *See Thompson v. City of Louisville*, 362 U.S. 199 (1960).

Accordingly, the jurisdiction of this Court should be invoked to right a particular injustice and to conclusively provide guidance to the lower federal courts regarding the proper exercise of a bankruptcy court's jurisdiction to fully and completely determine an objection to a proof of claim.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decision of the Court of Appeals of the First Circuit.

Respectfully submitted,

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December 8, 1994

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APPENDIX

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 94-1065

GOYA FOODS, INC., *et al.*,

Appellees,

v.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,

Appellant.

Appeal from the United States District Court
for the District of Puerto Rico

[Hon. Gilberto Gierbolini, *U.S. District Judge*]

Before

Selya, *Circuit Judge*,
Coffin and Bownes, *Senior Circuit Judges*

August 5, 1994

Per Curiam. We have reviewed the record and the parties' briefs in the case. Essentially for the reasons stated by the district court in its opinion, *Goya Foods* v. *Unanue-Casal* (*In re Unanue-Casal*), 164 B.R. 216, 222-23 (D.P.R. 1993), we find that the bankruptcy court abused its discretion in declining to abstain pursuant to 28 U.S.C. § 1334(c)(1).

Affirmed. See 1st Cir. Loc. R. 27.1.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 94-1065

GOYA FOODS, INC., *et al.*,
Appellee

v.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Appellant

JUDGMENT

Entered: August 5, 1994

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Puerto Rico.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court

/s/ Francis P. Scigliano
Clerk

[Filed Dec. 15, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE: ULPIANO UNANUE-CASAL
a/k/a CHARLES UNANUE,

Debtor

Civil No. 92-2909(GG)

GOYA FOODS, INC.; GOYA DE PUERTO RICO, INC.; ZOLMAR REALTY CORP.; INTERAMERICAS ADVERTISING; ISLAND CAN CORPORATION; TRADEWINDS FOODS, INC.; INTER-AMERICAS ADVERTISING CORP.; CPR INTERNATIONAL, INC.; CPR INTERNATIONAL LIMITED; CONDIMENTOS DE PUERTO RICO, INC.; INDUSTRIAL ENTERPRISES, INC.; JOSEPH A. UNANUE; FRANK UNANUE,

Appellants

v.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Debtor, and GERARDO QUIROS-LOPEZ,
Chapter 7 Trustee,

Respondents

Every happy family is alike, but every unhappy family is unhappy in its own way.

Tolstoy, Anna Karenina

OPINION AND ORDER

Before this court is yet another chapter in the epic struggle of the alleged [1] debtor to escape the consequences

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[1] Even though it appears more likely than not that the bankruptcy action is a sham, we shall for the sake of brevity refer to appellee as debtor, and not as alleged debtor, for the remainder of this OPINION.

of his prior actions and decisions. In a related action involving the same parties, *In re Unanue-Casal,* 159 B.R. 90 (D.P.R. Aug. 3 1993), we decided in favor of the appellants above. We do so again, because we remain convinced that debtor bankruptcy action is a ruse designed to frustrate the legitimate rights of his adversaries.

The instant matter involves a similar appeal from the bankruptcy court. We come to essentially the same conclusion that we reached in the earlier matter: that debtor's attempts to circumvent the action already pending in New Jersey must not succeed. Since the Bankruptcy court's holdings were clearly erroneous we reverse the order of non-abstention [2] so that the validity of the contracts attacked in debtor's counterclaim may be sent to New Jersey where it belongs for a resolution that will hopefully assist in terminating the Puerto Rican proceedings in this case. In order to understand what has happened so far, a brief synopsis of our previous decision is helpful: [3]

Charles Unanue (Debtor or Charles) filed a bankruptcy petition under Chapter 7 on August 29, 1990 in this District, after litigating for almost three years in the New Jersey Superior Court. The bankruptcy filing automati-

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[2] The decision of a bankruptcy court not to abstain from deciding a matter before it under 28 U.S.C. § 1334(c) is appealable as of right immediately to a district court. See, e.g., *In re Holtzclaw,* 131 B.R. 162, 163 (E.D.Cal. 1991). Appellee apparently does not disagree. Whether or not the bankruptcy court's decision not to abstain is decided under either the doctrine of mandatory or discretionary abstention is irrelevant. *In Re Mec Steel Bldgs, Inc.,* 136 B.R. 606, 610 (D.P.R. 1992) ("a motion for abstention is a contested matter upon which the bankruptcy court has the authority to enter a final order subject to appeal"). "A bankruptcy order need not dispose of all aspects of a case to be final; an order which disposes of a 'discrete dispute within the larger case' will be considered final and appealable." *In Re Unanue-Casal,* 144 B.R. 604, 608 (D.P.R. Aug. 7, 1992).

[3] For the full tale readers are referred to *In Re Unanue-Casal,* 159 B.R. 90 (D.P.R. Aug. 3 1993).

cally stayed the New Jersey action. The bankruptcy court denied Appellants relief from this stay on May 15, 1992, finding that they had not presented sufficient evidence of "cause" to warrant lifting the stay. On August 3, 1993, we held that the bankruptcy court erred when it found that the Appellant had not presented evidence of "cause", and in doing so abused its discretion in denying relief from the stay. We then reversed the bankruptcy court's order and granted appellants relief from the stay.

These proceedings have sprouted from a long and bitter dispute between the sons of Prudencio Unanue, (Prudencio) the founder of Goya, a manufacturer of foods directed predominantly at the Latino market. Don Prudencio and his wife, doña Carolina, were married in Puerto Rico on November 4, 1921; Prudencio was domiciled in New York and doña Carolina was domiciled in San Lorenzo, Puerto Rico. They had four sons: Charles, the debtor in the instant action, Joseph, Anthony (deceased) and Frank Unanue. Soon after their marriage, Prudencio returned to New York where doña Carolina joined him in 1923. By 1929, the Unanue's had moved to New Jersey where they would live and work until 1970.

On November 16, 1970, Prudencio executed his last will and testament and a revocable *inter vivos* trust in New York. He died in 1976, and after his death, the Trustees (Joseph and Frank Unanue) probated, administered and distributed his will. In 1986, the Superior Court in New Jersey approved a First Accounting filed by the trustees, and contested by C. Jeffrey Unanue, one of Charles' sons. At that time, several of the Beneficiaries received their share of the trust, in accordance with the trust's provisions. *See Unanue Casal v. Unanue Casal*, 132 F.R.D. 146, 148 (D.N.J. 1989), aff'd 898 F.2d 839 (1st Cir. 1990).

In 1969, prior to Prudencio's death in 1976, a dispute arose between Charles and his brothers, appellants in the

prior action as well as the instant lawsuit. Prudencio subsequently allied himself with his other sons against Charles.

After this time, Charles has claimed that he has been an innocent victim of his brothers' plottings. This intra-family squabble was temporarily settled on June 9, 1972, with the execution of a settlement, the 1972 Agreement, between the parties. Under this agreement Charles' voting shares in Goya and the other affiliated companies were purchased for $4.5 million. Alas, this peace proved too fragile to last.

In 1973, in what has proved to be a harbinger of the acrimony that now engulfs the parties, Charles alleged that the other signatories to the 1972 Agreement had breached its provisions. To resolve this conflict the 1974 Amendment to the 1972 Agreement was signed on July 31, 1974. As part of the 1974 Amendment, Charles was excluded from sharing in Prudencio's estate, and removed from the family enterprises; in return, Charles received an accelerated payment of $4,300,000. To secure finality, Charles promised never to bring any claim or suit contesting or objecting to don Prudencio's will or trust, and not to interfere with the disposition of assets of stock by Prudencio, his estate, the beneficiaries or his brothers. The Amendment also specified that any signatory who lost a suit "concerning any matter" with another signatory must recompense the prevailing party liquidated damages of doube costs and attorney's fees.

Notwithstanding his prior agreement to the contrary, eleven years after his father's death, in July 1987, Charles decided to challenge his exclusion from his father's estate. On August 13, 1987, Joseph and Frank, as trustees of the 1970 trust, sued Charles, in the Superior Court of New Jersey. They were seeking a declaratory judgment barring Charles from maintaining any claims against don Prudencio's estate and the *inter vivos* trust. Charles responded by filing in New Jersey an amended counterclaim

on June 17, 1988, claiming that both the 1972 Agreement and the 1974 Amendment were invalid. He also claimed a share of the trust corpus.

On August 30, 1988, Charles filed a claim in the Superior Court of Puerto Rico requesting that the 1972 Agreement and the 1974 Amendment be rescinded. This claim was consolidated with a previous 1987 action in the Superior Court of Puerto Rico seeking an inheritance from don Prudencio's, doña Carolina's and Ana María's estate. Finally, Charles filed a bankruptcy petition under Chapter 7 on August 29, 1990, in the District of Puerto Rico—nine days before the close of the trial in New Jersey. The New Jersey proceedings were stayed contemporaneously with the filing of this Bankruptcy petition.

Judge Kole of the New Jersey Superior Court decided on December 4, 1991, *after 171 days of trial*, that don Prudencio was domiciled in New Jersey on the dates in controversy. Appellants filed a second motion for further relief from the stay of the New Jersey proceeding. The bankruptcy court in its May 15, 1992, Opinion again denied relief from the stay, this time because it found the appellant failed to present evidence of "cause" to do so. We heard the arguments on appeal, and after reviewing the evidence and the law, we lifted the stay.

CURRENT PROCEEDINGS

In this action, the appellants contest the bankruptcy court's November 20, 1992 decision refusing to abstain from determining certain issues, namely the validity of the 1972 Agreement and the 1974 Amendment thereto that form part of Charles' counterclaim in the New Jersey action as well as his counterclaim in the bankruptcy action. Appellants are eleven companies, among them Goya Foods, Inc., and Goya de Puerto Rico, Inc., and individuals, notably Joseph and Frank Unanue.

As the New Jersey action commenced, the New Jersey court took exclusive jurisdiction over the estate of Don

Prudencio and the Trust. At the close of the litigation, Charles filed for bankruptcy in this district on August 29, 1990, for the clear purposes of seeking what he perceived to be a friendlier jurisdiction.

Charles' bankruptcy schedule claimed that while he possessed assets of merely nominal worth, he had liabilities of over one million dollars. (Item 3)[4]. It also omitted contingent and disputed claims. Appellants (and this court) find this somewhat incredible, given the assets transferred to Charles over the years of the family dispute and the peculiarity of some of Charles' financial transactions, which appear designed to hide his assets.

In the bankruptcy cases two adversary proceedings were filed against debtor. The first proceeding was designed to deny Charles a discharge of his debts on the ground that he engaged in various forms of misconduct that would bar discharge under 11 U.S.C. § 727, e.g. concealing assets, failing to provide essential financial information, etc. In his response to the complaint objecting to the Chapter 7 discharge, debtor consented to waive his discharge on the ground that he had no need for it. (Item 51).

The second adversary proceeding relates to appellants' belief that Charles is hiding substantial assets in the name of his current wife and two dummy corporations. The Chapter 7 Trustee authorized appellants' pursuit of an adversary proceeding on his behalf to set aside allegedly fraudulent transfers and to seek turnover of this property to the bankruptcy estate. (Item 49).

Debtor filed an amended counterclaim in March of 1992, alleging, inter alia, that the 1972 Agreement and the 1972 Settlement should be invalidated and deemed unenforceable and that the counterclaim defendants should be liable in the amount of millions upon millions of dollars. In response, the Goya companies moved the bank-

[4] Item numbers refer to documents submitted as part of the record on appeal.

ruptcy court to abstain from deciding the counterclaim under 28 U.S.C. §§ 1334(c)(1) and (2) to allow the issue to be decided in New Jersey where it has been the subject of a long and protracted litigation. (Item 57).

On November 20, 1992, the bankruptcy court severed the first count of debtor's counterclaim, in which it is asserted that the 1974 Amendemnt to the 1972 Agreement is void and held that the issue was a "core" proceeding within bankruptcy court jurisdiction and thus refused to abstain from addressing it. The instant appeal was filed on November 25, 1992.

We find that the bankruptcy court abused its discretion and that its November 20, 1992 decision was clearly erroneous. We REVERSE the November 20, 1992 Opinion and Order of the Bankruptcy Court, and ORDER the bankruptcy court to abstain from resolving the state law issues presented in Debtor's Amended Counterclaim, including but not limited to debtor's challenge to the proofs of claim based on his allegation that the 1974 Amendment to the 1972 Settlement Agreement between the parties was invalid, and permit the issue to be resolved in the pending New Jersey Superior Court action.

We find that given our prior ruling lifting the stay, that the issue of the validity of the 1972 Agreement and the 1974 Amendment is a matter best left to the New Jersey courts that have already familiarized themselves with the facts and issues. We find that the New Jersey action represents a prior pending state court action that is the appropriate forum in which the state law issues raised in the Amended Counterclaim should be resolved.

I. Standard of Review

The standards of review that to decisions of the bankruptcy court are well-known. Under Fed. R. Bank. Bank. Proc. 8013, a bankruptcy court's factual findings are subject to reversal only if clearly erroneous, while legal conclusions are subject to *de novo* appeal. Findings of

facts are reviewed under the clearly erroneous standard. "Ultimate facts", or mixed questions of fact and law, are also tested in the First Circuit under the "clearly erroneous" standard. *U.S. v. Cochrane*, 896 F.2d 635, 639 (1st Cir.), cert. den. 496 U.S. 929 (1990).

II. Abstention

A. Mandatory Abstention

Under 28 U.S.C. § 1334(c)(2), there are six criteria for the exercise of mandatory discretion: (1) the motion to abstain is timely; (2) the proceeding is based on a state law cause of action; (3) the proceeding is related to a case under Title 11 but does not arise under Title 11; (4) the action could not have been commenced in federal court absent jurisdiction under 28 U.S.C. § 1334; (5) the state court action has commenced; and (6) the state court action can be timely adjudicated. *See In Re Nationwide Roofing and Sheet Metal, Inc.*, 130 B.R. 768, 778 (Bankr. S.D. Ohio 1991). We address this concerns seriatim.

No party contests the obvious fact that the first criterion is met. The second requirement is also satisfied, as the Amended Counterclaim is based on state law, i.e. the contract law of New Jersey. The third prerequisite is the crux upon which mandatory abstention swings, but in the final analysis it is present as well.

Indeed, this is the only relevant issue addressed by Appellee's briefs. Since Appellee has ignored every other contention and argument of Appellants, we deem them to be admitted. We would do so anyway, since we are firmly convinced of the accuracy of appellants' factual assertions and our reading of the law convinces us that they are in the right legally as well.

The validity of the 1974 Agreement is a contract law issue. It does not, under § 157(b)(2)(B), truly involve "matters concerning the administration of the estate"

of a debtor. It involves litigation to which the alleged debtor is a party. These kind of state law contract claims have been found not to fall within the categories of core proceedings. *In Re Castlerock Properties,* 781 F.2d 159, 161-62 (9th Cir. 1986). The Amended Counterlcaim involves an assertion not that the 1974 contract is somehow invalid under bankruptcy law, but that it is defective under contract principles.

"If an action would survive outside of bankruptcy, and in the absence of bankruptcy would have been initiated in a state or district court then it clearly involves a non-core matter." *In Re Mec Steel Bldgs., Inc.,* 136 B.R. 606, 609 (D.P.R. 1992) (citations omitted). "To merit classification as a core proceeding within the meaning of the statute, the nexus of the counterclaim itself 'must be a 'core' proceeding as that term is used in section 157 (b)(1); that is to say, it must arise under or arise in a case under Title 11." In other words, a debtor's counterclaim "does not become 'core' simply because it is technically or arguably within a given (b)(2) description." " *In Re Candalero Sand & Gravel, Inc.,* 66 B.R. 903, 907 (D.P.R. 1986) (citations omitted).

Charles claims that a claim filed against an estate is automatically "a core proceeding because it could arise only in the context of bankruptcy." (Appellee's Brief on Appeal, Docket Entry 8, at 25). This argument elevates form over substance. The mere fact that the Amended Counterclaim is raised in the form of a counterclaim against two parties that have filed contingent claims against the bankruptcy estate does not make it a core proceeding. This view would so enlarge bankruptcy jurisdiction as to convert every state action involving a bankruptcy debtor into a federal matter. *See Borintex Manufacturing v. Banco Gubernamental de Fomento,* 102 B.R. 8, 9 n.1 (D.P.R. 1989). Substance is more important than mere form. *Flores Rivera v. Telemundo Group,* 133 B.R. 674, 677 (D.P.R. 1991).

The contract validity question is not core to the bankruptcy proceeding. Even where the action "will drastically affect both the debtor-creditor relationship and the assets of the state" it cannot be deemed a core proceeding if it arises prior to the bankruptcy filing and involves a right independent of and antecedent to the bankruptcy filing. *In Re Candalero Sand & Gravel, Inc.*, 66 B.R. 903, 906 (D.P.R. 1986).

If Charles wants to challenge the contract he himself signed to settle protracted litigation over two decades ago, he should do so in the New Jersey forum where these issues are before the court. Additionally, as debtor himself recognizes, the state law rights that form the core of the counterclaim "could be enforced in a state court proceeding" and have absolutely no necessary connection to the bankruptcy court. (Docket Entry 8, 25-26). Abstention is thus the proper course. *See In Re Richmond Tank Car Co.*, 119 B.R. 124, 127 (S.D. Tex. 1989).

The final three requirements are obviously satisfied. The action could not have been commenced in federal court absent 28 U.S.C. § 1334. The New Jersey action has already commenced, and the case and the issue of the legal effects of the 1974 Amendment has been pending for some time, making this a proper case in which to abstain. *In Re Mec Steel Bldgs., Inc.*, 136 B.R. at 610. Finally, there is no reason not to believe that the state issue could not be timely adjudicated, as long as Charles slows down or ceases his attempts to protract it. Since we have already lifted the authomatic stay of the New Jersey action there is no reason for it not to go forward expeditiously. See *Acolyte Electric Corp. v. New York*, 69 B.R. 155, 180 (E.D.N.Y. 1986). If Charles had not sued for bankrutpcy in Puerto Rico, the New Jersey action might have concluded by now to resolve all remaining issues once Prudencio's domicile was decided to be New Jersey.

B. Discretionary Abstention.

We now turn to the question of discretionary abstention, and find that even were mandatory discretion not as clearly warranted as we find it is, that it was an abuse of the bankruptcy court's discretion not to abstain under the doctrine of discretionary abstention. "Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for state law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 1334(c)(1).

In *Flores Rivera,* many of the factors underlying the doctrine of discretionary abstention were enumerated. Among those were (1) the effect on the efficient administration of the estate, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulties or unsettled nature of the applicable law, (4) the present of a related proceeding in state court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the relatedness of the proceeding to the main bankruptcy case; (7) the substance, and not the form, of the alleged core proceeding; (8) the feasibility of severing state law issues from bankruptcy matters; (9) the burden on the docket of the bankruptcy court; (10) the likelihood that commencement of bankruptcy proceeding amounted to forum shopping; (11) the existence of a right to jury trial; and (12) the presence in the proceeding of nondebtor parties. *Flores Rivera,* 133 B.,R. at 677.

Under the above analysis we find that it was an abuse of discretion for the bankruptcy court to decline to abstain. This is a state law question, and abstention is warranted "on equitable grounds, and in the interest of justice and . . . respect for local law." *In re Interamericas Turnkey Development Co., Inc.,* 94 B.R. 9, 13 (D.P.R. 1988). While it is clear from our above discussion and from our previous decision that the factors warranting

discretionary abstention are met, we find several factors especially prominent.

One major factor counselling discretionary abstention is the principle of judicial economy. We found previously that in order to preserve the scarce resources of the judiciary duplicative proceedings should be avoided and that the New Jersey court to proceed to determine the issues relating to Charles' counterclaims in that action.

Especially important is the New Jersey court's familiarity with the entire history of this festering family fiasco.

> The New Jersey court examined the family's history from the date don Prudencio arrived in the United States to don Prudencio's death in 1976. In addition the New Jersey Court is fully acquainted with the whole situation. It spent [171] days in trial, with [32] witnesses and [600] exhibits marked into evidence. Finally, it seems to us incontrovertible that a State court has more expertise and is more familiar with its own probate and contract laws than a Federal bankruptcy court.

In Re Unanue-Casal, 159 B.R. at 98 (footnote omitted).

Another fundamental concern is the interrelatedness of the state law action with the bankruptcy action, or lack thereof. We again refer to our previous decision:

> We are persuaded by Appellants' argument that a resolution of the New Jersey proceedings would advance the settlement of the Bankruptcy case without interfering with it. If, for example, the decision came down in favor of the Debtor, he would then have available substantial funds with which to satisfy his creditors. If he were to lose in New Jersey then the Debtor would have a declaration against him under the 1974 Amendment for attorney's fees—no small sum—and a declaration that his inheritance claims were unconvincing. Both of these possible outcomes would promote the bankruptcy proceeding because

> they would determine if the Debtor would have additional funds or an additional debt. Neither of these proceedings would interfere with the estate because they are declaratory in nature and could not be acted upon without the proper proceedings in bankruptcy court.
>
> * * * *
>
> We are persuaded the Appellants have presented prima facie evidence that the resolution of this case in New Jersey would not interfere with the bankruptcy proceedings. On the other hand, the Debtor has failed to present any evidence to show that the administration of his estate would be affected.

In Re Unanue-Casal, 159 B.R. at 99.

We also find that it is extremely likely that the filing of the bankruptcy action amounted to forum shopping with the intent of avoiding the consequences of a New Jersey decision that Charles felt would be adverse to his interests.

> The Debtor, Charles Unanue, filed his petition for bankruptcy on August 29, 1990; about one week before the last trial day, scheduled for September 7, 1990, before Judge Kole. The Appellants claim that the Debtor, who was present in New Jersey during the trial until September 7, neither objected to the proceedings nor did he inform the Appellants of his Bankruptcy petition. These circumstances closely resemble those cases that found the Debtor had filed bankruptcy in bad faith to avoid the effect of an impending decision. The bankruptcy court, however, found that the Debtor's motions for removal from the New Jersey Superior court were merely his efforts to have his case heard in Puerto Rico.[5]

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[5] The Appellants informed the bankruptcy court in their brief of the Debtor's many attempts to remove the case to Puerto Rico. The Debtor tried to remove both to a district court in New Jersey and to this district court in Puerto Rico. He was sanctioned by both District Courts under F.R.C.P. 11, and a $16,011.15 sanction

> We can agree with the bankruptcy court that the Debtor was in a predicament, but we cannot agree it is the responsibility of the judicial system to accommodate him. Moreover, we cannot overlook the closeness to the end of trial in New Jersey that the debtor filed his bankruptcy petition; it has every appearance of being the sole result of the Debtor's or his attorney's perceptions that he was going to lose in New Jersey. We cannot turn our backs on this manipulation of the judicial system. There is also evidence that the Debtor's petition for bankruptcy is a sham, because he is not "financially distressed".

In Re Unanue-Casal, 159 B.R. at 101-02.

CONCLUSION

As a result of the analysis above, the court finds that the bankruptcy court's decision not to abstain was incorrect under either doctrine of abstention, mandatory or discretionary. Debtor's counterclaim should be remanded to the state court of New Jersey that has already begun to consider the facts relating to said counterclaim. Therefore, the bankruptcy court's decision not to abstain is hereby REVERSED. The stay is hereby lifted and the litigation pending in New Jersey will proceed. Judgment will be issued accordingly.

SO ORDERED.

San Juan, Puerto Rico, this 14th day of December, 1993.

/s/ Gilberto Gierbolini
GILBERTO GIERBOLINI
Chief
U.S. District Judge

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was assessed against him. (R. on Appeal Vol. I, Ex. 33A at 10, n.7) *See Unanue-Casal v. Unanue-Casal,* 898 F.2d 839 (1st Cir. 1990); *See also Unanue Casal v. Unanue Casal,* 132 F.R.D. 146 (D.C.N.J. 1989).

[Filed Dec. 15, 1993; Entered Dec. 16, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE: ULPIANO UNANUE-CASAL
a/k/a CHARLES UNANUE,

Debtor

Civil No. 92-2909(GG)

GOYA FOODS, INC.; GOYA DE PUERTO RICO, INC.; ZOLMAR REALTY CORP.; INTERAMERICAS ADVERTISING; ISLAND CAN CORPORATION; TRADEWINDS FOODS, INC.; INTER-AMERICAS ADVERTISING CORP.; CPR INTERNATIONAL, INC.; CPR INTERNATIONAL LIMITED; CONDIMENTOS DE PUERTO RICO, INC.; INDUSTRIAL ENTERPRISES, INC.; JOSEPH A. UNANUE; FRANK UNANUE,

Appellants

v.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Debtor, and GERARDO QUIROS-LOPEZ,
Chapter 7 Trustee,

Respondents

JUDGMENT

In accord with our ORDER and OPINION of even date, the court finds that the bankruptcy court's decision not to abstain was incorrect under either doctrine of abstention, mandatory or discretionary. Debtor's counterclaim should be remanded to the state court of New Jersey

that has already begun to consider the facts relating to said counterclaim. Therefore, the bankruptcy court's decision not to abstain is hereby REVERSED. The stay is hereby lifted and the litigation pending in New Jersey will proceed. Judgment is to be entered accordingly.

SO ORDERED.

San Juan, Puerto Rico, this 14th day of December, 1993.

/s/ Gilberto Gierbolini
GILBERTO GIERBOLINI
Chief
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 94-1065

GOYA FOODS, INC., *et al.*,
Appellee,

v.

ULPIANO UNANUE-CASAL,
Appellant.

Before

Selya, *Circuit Judge,*
Coffin and Bownes, *Senior Circuit Judges*

ORDER OF COURT

Entered September 9, 1994

Appellant's petition for rehearing is *denied.*

By the Court:

/s/ Francis P. Scigliano
Clerk

[Filed & Entered Nov. 20, 1992]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF ULPIANO UNANUE-CASAL
a/k/a CHARLES UNANUE,
Debtor

Case No. 90-04490(SEK)

CHAPTER 7

Consolidated Complaints
Under Adv. No. 91-0099

GERARDO A. QUIROS-LOPEZ, TRUSTEE
GOYA FOODS, INC. AND GOYA DE PUERTO RICO, INC.,
Plaintiffs

v.

ULPIANO UNANUE-CASAL,
Defendant

GOYA FOODS, INC. AND GOYA DE PUERTO RICO, INC. FOR
AND ON BEHALF OF GERARDO A.
QUIROS-LOPEZ, TRUSTEE,
Plaintiffs

v.

ULPIANO UNANUE-CASAL A/K/A CHARLES UNANUE,
LILIANE UNANUE, EMPEROR EQUITIES, INC.
AND KALIF TRADING, INC.,
Defendants

ULPIANO UNANUE-CASAL,
Debtor-Counterclaimant

v.

JOSEPH A. UNANUE and FRANK UNANUE, INDIVIDUALLY AND AS EXECUTORS OF THE WILLS OF PRUDENCIO AND CAROLINA UNANUE AND AS TRUSTEES OF THE INTER-VIVOS TRUST CREATED BY PRUDENCIO UNANUE; GOYA FOODS, INC., *et al.*,
Defendants Counterclaimees

OPINION AND ORDER

Should we sever Debtor's and the Trustee's objection to Goya Foods, Inc. and Goya de Puerto Rico, Inc.'s proof of claim and then grant these Corporations' requests for dismissal or abstention filed in this proceeding?

Background

Sometime in 1969 a dispute arose between Debtor, his father and brothers who were the sole shareholders of Goya Foods, Inc. and Goya de Puerto Rico, Inc. (the Goyas).[1] After extensive litigation, the dispute was settled. The terms of the settlement are contained in a Settlement Agreement dated June 9, 1972 for the Sale of Interest of Charles Unanue in Goya Foods, Inc. and Affiliated Companies. (the 1972 Settlement Agreement). This agreement was executed in Puerto Rico. Pursuant to its terms, Charles Unanue sold his voting shares in Goya Foods and his interest in the affiliated companies for $4.5 million.

In 1973 Debtor claimed the Buyers had breached the 1972 Settlement Agreement. Litigation commenced anew

[1] Refer to our Opinion and Order entered on May 15, 1992, (docket entry 252-A), for more details about this dispute.

only to be settled by an amendment to the 1972 agreement executed on July 31, 1974. In the 1974 Amendment, Debtor waived his right to inherit from his father. The 1974 Amendment also specified liquidated damages by way of double costs and attorneys' fees to be assessed against any signatory who once again institutes and looses any suit, action or proceeding contesting the settled matters.

It is this last clause, the penal clause of the 1974 Amendment, which is the backbone for the Goyas' proofs of claims filed in this bankruptcy case. These companies each claim they should be paid $15,000,000.00 and $5,000,000.00 respectively, as general unsecured creditors, because Debtor is currently contesting the validity of the 1972 Settlement Agreement as amended in 1974, his father's will and claiming a share in his mother's and aunt's estates before the state courts of New Jersey, Puerto Rico and now in this bankruptcy court. This new wave of litigation, according to the Goyas, is a violation of the covenant calling into play the penal clause of the 1974 Amendment.

Debtor objects to these claims because:

1. the 1974 Amendment is invalid or void, because under the laws of Puerto Rico Debtor could not have waived his future right to inherit from his father;

2. the claims lack evidence to substantiate the respective amounts to be paid; and,

3. the claims are contingent and "unmature and should be liquidated by the bankruptcy court in order to afford the Debtor complete relief."

The Trustee joined Debtor's objection to the Goyas' claims.

At that point in time all parties were engaged in a flurry of filings; contested matter to request the lift of stay, two adversary proceedings, the objection to proofs

of claims, plus a plethora of discovery motions all of which confirm the continued discord. In sum, we were faced with an imbroglio. We tried to manage this litigation by consolidating the adversary proceedings and ordering Debtor to file the objection to the Goyas' claims as a counterclaim in the consolidated proceeding. Subsequently, Debtor amended the counterclaim. The prayer for the first claim for relief in this amended counterclaim asks this Court to declare "null and void and meritless on its face *all* of the proofs of claims filed by the Goya[s]."

SEVERANCE

The first claim for relief explains why Debtor wants us to deny the Goyas' proofs of claims filed in this case. Since the consolidation, the parties have filed the several preliminary motions which are pending.

We have reviewed all of these motions. Pursuant to this review we hereby sever the amended counterclaim's "First Claim for Relief", and within that First Claim for Relief, we sever the issue of whether the Goyas' proofs of claims filed in this case should be denied together with those portions of the preliminary motions addressing the Bankruptcy Court's lack of jurisdiction and need to abstain in this proceeding.[2]

We order the severance because:

1. We may avoid resolving intricate issues of jurisdiction and determinations of whether all causes of actions raised in the complaint and amended counterclaim are core or "non-core".[3]

2. Whether we rule in favor or against the objections, the ruling would afford both the bankruptcy court and

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[2] *In Re Manufacturers Acceptance Corp.*, 82 B.R. 155 (Bkrtcy. S.D. Fla. 1988).

[3] The consolidated adversary complaints filed in this case seek not only to avoid alleged fraudulent transfers, but also seek a denial of discharge.

the Trustee a swift and economical way of liquidating this Chapter 7 case. Hence, judicial resources are conserved by this severance in suits which thus far have engendered litigation on constitutional questions posed by *Connecticut v. Doehr,* and a myriad of preliminary requests including such arcane matters as issuance of letters of rogatory to allow attachments, etc., of assets purportedly located in Great Britain and Switzerland.[4] These are but a presage of what is to come.

In sum, irrespective of the outcome, resolving the objection to the Goyas' claims ahead of other issues raised in the consolidated amended adversary complaints and the amended counterclaim, provides the best solution to this bankruptcy case.

Jurisdiction

Having severed the issue of Debtor's and the Trustee's objections to Goyas' proofs of claims, it behooves us to decide whether we have jurisdiction to adjudicate the objection.

Goyas urge us to abstain from adjudicating the objection to Goyas' claims in favor of allowing them to be "asserted and resolved" in pending state court litigation, particularly since we lack *jurisdiction* to enter a final and binding decision in this "non core" proceeding.

Does the jurisdiction in bankruptcy extend to adjudicating objections to claims whose ultimate resolution depends upon applicable state law? Of all the opinions we have read on the subject of federal courts jurisdiction in bankruptcy and the distinction between core and "non-core" matters, we find Judge Wisdom's opinion *In the Matter of Wood,* a superb explanation of these sometimes confused concepts.[5] We can not improve on what Judge

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[4] 111 S. Ct. 2105 (1991).

[5] 825 F.2d 90 (5th Cir. 1987).

Wisdom has stated. We therefore, respectfully adopt his position as our own when he states.

> "Years of effort to reform the bankruptcy laws culminated with the enactment of the Bankruptcy Reform Act of 1978. [cit omitted] As part of its overall goal to create a more efficient procedure for administering bankruptcies, the 1978 Act vested broad powers in the bankruptcy courts. This reform was shortlived. In 1982 the Supreme Court decided *Marathon v. Northern Pipelines.* [cit. omitted] The Court declared the jurisdictional provision of the 1978 Act unconstitutional because, in short, it vested Article III judicial power in Article I judges. Courts were left to their own devices while Congress deliberated a response to *Marathon. With prompting from bench, bar, and law professors with expertise in bankruptcy, Congress responded with the Bankruptcy Amendments and Federal Judgeship Act of 1984. Essentially, Congress reenacted the 1978 Act, but divided its jurisdictional grant into "core" proceedings, over which the bankruptcy courts exercise full judicial power—and "otherwise related" or "non-core" proceedings—over which the bankruptcy courts exercise only limited power. . . ."* [6]

Judge Wisdom then examines whether the Bankruptcy Amendments and Federal Judgeship Act of 1984 in fact limited the jurisdiction of the federal courts to adjudicate matters in a bankruptcy case. He concludes these Amendments placed no such limit on the federal courts when handling a bankruptcy case. Rather these Amendments reallocated the grant of the all encompassing jurisdiction between the Article III district court judges and the Article I bankruptcy court judges, through the distinction between the core and "non-core" matters. Thus, Judge Wilson states:

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[6] *Id.* at 91.

"Congress was concerned with the inefficiencies of piecemeal adjudication of matters affecting the administration of bankruptcies and intended to give federal courts the power to adjudicate all matters having an effect on the bankruptcy. [*cit. omitted*] *Courts have recognized that the grant of jurisdiction under the 1978 Act was broad.* [*cit. omitted*]

. . . Nothing in Marathon suggests that we should read the corresponding provisions of the 1984 Act differently.

For the purpose of determining whether a particular matter falls within bankruptcy jurisdiction, it is not necessary to distinguish between proceedings "arising under", "arising in a case under", or "related to a case under", title 11. These references operate conjunctively to define the scope of jurisdiction. Therefore, it is necessary only to determine whether a matter is at least "related to" the bankruptcy." The Act does not define "related" matters.

Courts have articulated various definitions of "related", but the definition of the Court of Appeals for the Third Circuit appears to have the most support: "whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. [*cit. omitted*] *This definition comports with the legislative history of the statutory predecessor to section 1334. Neither Marathon nor general concerns of comity counsel against its use. We adopt it as our own."* [7]

Can anyone seriously question whether the outcome of Debtor's and the Trustee's objection to the Goyas' claims has an effect on the estate being administered in this bankruptcy case?

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[7] **Wood, at 92-93.**

We therefore hold jurisdiction to adjudicate the objections to the Goyas' claims lies in the federal court in this bankruptcy case.

Placement of Jurisdiction

Judge Wisdom examines the placement of bankruptcy jurisdiction under 1978 Act which is commonly referred to as Bankruptcy Code, by stating:

> *"The jurisdictional provision of the 1978 Act, section 1471, accomplished two things. First, subsection (b) vested an expansive bankruptcy jurisdiction in the district courts.* [*cit. omitted*] *Second, subsection (c) conferred the power to exercise that jurisdictional grant in the bankruptcy courts.* [*cit. omitted*] *The issue in Marathon was not the constitutionality of subsection (b), but the constitutionality of subsection (c). Marathon held that Congress could not vest the whole of bankruptcy jurisdiction in bankruptcy courts because the jurisdictional grant encompassed proceedings too far removed from the "core" of traditional bankruptcy powers to allow them to be adjudicated by non-Article III judges.* [*cit. omitted*] *The holding in Marathon suggests no concern over the constitutionality of the scope of bankruptcy jurisdiction defined by Congress; its concern is with the* placement *of that jurisdiction in non-Article III courts. In response to Marathon, Congress altered the placement of bankruptcy jurisdiction by creating a statutory distinction between core and non-core proceedings and restricting the power of bankruptcy courts to adjudicate the latter." (our emphasis)*[8]

To determine whether we may enter a final opinion or a proposed one subject to de novo review by the U.S. District Court on the Trustee's objection to the Goyas' claims, we must determine whether an objection to a

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[8] *Wood*, at 92-93.

proof of claim is a core bankruptcy proceeding traditionally within the powers of adjudication granted to the non-Article III bankruptcy judge.[9] *In short, is the objection raised herein a core or "non-core" matter?*

Although the statute does not define "core", it does provide a non exclusive list of examples of core proceedings.[10] *These examples include:*

> *"(A) matters concerning the administration of the estate;*
>
> *(B) allowance or disallowance of claims against the estate."*

Judge Wisdom again provides further guidance by stating:

> *"In determining the nature of the proceeding for the purposes of determining core status, the court must look both at the form and substance of the proceeding."* [11]

We already know proceeding at hand concerns both of the cited examples which Congress proffered as core proceedings.

The form of the present action is peculiar to bankruptcy proceedings and is provided for in Rule 3007 of the Federal Rules of Bankruptcy Procedure, and Section 502(c) of the Code.[12] *In this sense an objection to a proof of*

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[9] 28 U.S.C. Subsection 157(b)(1) gives the federal bankruptcy courts the power to adjudicate "all core proceedings under title 11, or arising in a case under title 11" and to enter appropriate orders and judgments. Subsection 157(c)(2) grants these courts the limited power to hear "a proceeding that is not a core proceeding but otherwise related to the case under title 11" and submit proposed findings of fact and conclusions of law to the federal district court for their de novo review. *Wood*, at 95.

[10] See *28 U.S.C. Section 157(b)(2)*.

[11] *Wood*, at 97.

[12] Rule 3007 provides: "An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice

claim could only arise within the context of a bankruptcy case and is one of the matters traditionally adjudicated by bankruptcy referees, now judges.

We are aware that the state law component underlying the Goyas' claims [the penalty clause] could be enforced in a state court proceeding absent bankruptcy, but the nature of the state proceeding would be different from the proceeding followed in the objection to the Goyas' claims.[13]

Wherefore, both the form and substance of this proceeding is a core matter because the objection to the Goyas' claims does raise as a primary issue the allowance or disallowance of their proofs of claims and their federally created right to receive estate funds upon distribution of the estate's assets.

Abstention

Like Judge Wisdom, we do not believe the unaltered broad grant of jurisdiction to the federal courts to be exercised in a bankruptcy case will cause the federal courts to constantly decide matters best left to the state courts.[14] *The doctrine of abstention built into 28 Section 1334 is the key which preserves this balance.*

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of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding."

Section 502 (c) states:

"There shall be estimated for purposes of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance."

[13] *Wood*, at 97.

[14] Frankly, most bankruptcy courts are too busy to even want to take on another court's case load.

> *"The district court expressed its concern that an overbroad interpretation of section 1334 would bring into federal court matters that should be left to state courts to decide. We have also expressed the same concern.* [*cit. omitted*] *There is no restrictive interpretations of the statutory grant of jurisdiction under section 1334. The Act grants the district court broad power to abstain whenever appropriate "in the interest of justice, or in the interest of comity with State courts or respect for State law".* [*cit. omitted*] *The abstention provisions of the Act demonstrate the intent of Congress that concerns of comity and judicial convenience should be met, not by rigid limitations on the jurisdiciton of federal courts, but by the discretionary exercise of abstention when appropriate in a particular case. . . ."* [15]

Under 28 U.S.C. 1334(c)(1), we may voluntarily abstain from adjudicating any matter, even if it meets the definition of a "core" proceeding, if principles of fairness or comity justify deference to state courts.[16]

Goyas' aver we should abstain because:

(1) the suits filed before the Probate State Court of New Jersey were pending when this petition was filed;

(2) these suits were in fact more advanced than the one at hand;

(3) the issues raised herein could be more expeditiously and economically adjudicated in the New Jersey action;

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[15] *Id.* at 91.

[16] *Matter of Candelero Sand & Gravel, Inc.*, 66 B.R. 903, 907 (D.C. P.R. 1986); *Borintex Mfg. Corp. v. Bco. Gubernamental de Fomento Para P.R.*, 102 B.R. 8-9 .C. P.R. 1989); 1 *Collier on Bankruptcy*, Section 3.01 (15th ed.). *Cf. In Re Corporacion de Servicios Medicos Hospitalarios*, 60 B.R. 920, 927-930.1 *Collier on Bankruptcy*, 3.01[b] (15th ed.).

(4) Debtor lacks standing to object to the Goyas' claims.[17]

We concede the suits before the state courts of New Jersey and Puerto Rico were filed before this petition in bankruptcy. We also know these suits involve the same family feud, revolve around the same core of facts, but request different remedies.

We do not agree that these suits are more advanced than the one at hand nor that the severed issue could be more rapidly and economically adjudicated by the Probate New Jersey Court. The case was filed before the Probate Court of New Jersey in 1987. That Court stayed all causes of action except the issue of Don Prudencio's domicile on the date he died. Litigation of that one issue went on in the Probate Court of New Jersey for about two years; a retired judge had to be activated to adjudicate the issue; and the trial lasted some one hundred and seventy two trial days.

The suits filed in Puerto Rico were consolidate and assigned to Judge Alicea of the P.R. Superior Court. He entered a stay and decided to abstain for reasons of comity, from determining Don Prudencio's domicile at death. He has not stated whether he will give full faith and credit to the Probate Court's adjudication of that issue.

We in turn also decided to stay our proceedings until the Probate Court decided the issue of domicile in the hopes it might have rendered this bankruptcy moot.

When the Probate Court decided Don Prudencio's domicile was New Jersey on the date he died, bankruptcy

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[17] Goyas are perhaps purposefully vague in stating whether their request for our abstention is premised on the mandatory or discretionary abstention provisions of the law. We believe the discretionary provision for abstention is the one invoked herein, as mandatory abstention is precluded by our rulings favor of subject matter jurisdiction and determining the objection to claims is a core matter.

proceedings were renewed. The same activity did not occur in the other courts because of the automatic stay. Hence, this Court is at a more advanced stage than any other one, especially when the pretrial is already scheduled for December 1, 1992.

Furthermore, if necessary, Code Section 502(c) allows this Court to estimate the proofs of claims which unduly delay the administration of a bankruptcy case, when these claims are contingent or unliquidated. We know of no parallel state court procedure. This procedure peculiar to bankruptcy is designed to provide a just and rapid solution to proceedings in a bankruptcy case.

Our review of documents filed shows the Trustee at an early date adopted Debtor's objection and joined Debtor in urging us to adjudicate the objection before considering other pending matters. We, therefore, hold the objection to Goyas' claims has been raised by the real party in interest with standing so to do.

To summarize:

1. We sever the amended counterclaim's "First Claim for Relief", and within that First Claim for Relief, we sever the issue of whether the Goyas' proofs of claims filed in this case should be denied together with those portions of the preliminary motions addressing the Bankruptcy Court's lack of jurisdiction and need to abstain in this proceeding.

2. We stay all other causes of actions together pending discovery in the captioned adversary proceeding.

3. The Goyas' Motion to Dismiss the severed issue for lack of subject matter jurisdiction is denied, as well as their request calling on us to exercise discretionary abstention to allow the New Jersey Court to decide the severed issue.

4. The pretrial hearing scheduled for December 1, 1992 before the undersigned remains in full force and effect *with respect to the severed issue only*.

The Clerk will notify this Opinion and Order immediately to all parties by the fastest means available to her.

GIVEN in San Juan, Puerto Rico, this 20th day of November 1992.

/s/ Sara de Jesus
SARA DE JESUS
U.S. Bankruptcy Judge